ALL MALAYAN ESTATES STAFF UNION

v.

MALAYAN AGRICULTURAL PRODUCERS ASSOCIATION & 3 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' HJ. ABU MANSOR BIN ALI J
[ORIGINATING MOTION NO. R-25-45 OF 1991]
18 APRIL 1994

INDUSTRIAL LAW*: Application for certiorari and mandumaus to quash award of Industrial Court and for re-hearing of the applicants' case - Applicant and respondents parties to a collective agreement - Employees of 3rd respondent transferred to estate owned by 4th respondent - Employees of 4th respondent receiving benefits pursuant to Article 52(e) of collective agreement - Employees of 3rd respondent not enjoying same benefits - Applicant seeking interpretation of Article 52(a) of collective agreement - Industrial Court deciding existing benefits solely meant for employees of 4th respondents - Whether Industrial Court committed jurisdictional error - Whether decision tainted with illegality, irrationality or procedural impropriety.*

This was an application for an order of certiorari to quash the decision of the Industrial Court in Award No. 82 of 1991 and for an order of mandumas for a re-hearing of the case by the Industrial Court.

The applicant and respondents were parties to a collective agreement (the said agreement) taken cognizance of by the Industrial Court pursuant to s.16 of the Industrial Relations Act 1967 (the Act). The terms and conditions of employment of the employees of the 2nd to 4th respondents were contained in the said agreement. The employees of the 3rd respondent were transferred from the 3rd respondent's factory to the Sungai Mahang Estate owned by the 4th respondent where the employees of the 4th respondent were receiving allowance benefits under Article 52(e) of the said agreement. As the 3rd respondent remained as employer, the 3rd respondent's employees were not given the same benefits. The applicant sought an interpretation of Article 52(a) of the said agreement from the Industrial Court under s. 33(1) of the Act. The Industrial Court decided that the existing benefit in Sungai Mahang Estate was solely meant for employees of that estate and not employees of the 3rd respondent who also worked there.

The applicant's Counsel submitted that the Industrial Court, acting under s. 33(1) of the Act ignored the express provisions of Article 52 which it was required to interpret but which it instead varied by its award. Counsel claimed the Industrial Court also acted in excess of its powers and accordingly the ouster clause/s. 33B(1) of the Act would not apply because the ouster clause would only apply if the award was made in compliance with this Act. It was further submitted that the Industrial Court had committed a jurisdictional error in that the decision was tainted with "illegality", "irrationality" and "procedural impropriety".

Held:

[1] On a construction of Article 52 (a) of the collective agreement, the said employees after their physical transfer to Sungai Mahang Estate should enjoy the benefit of the allowance in Article 52(e) like the employees of the 4th respondent who were already enjoying the benefit.

[2] The Industrial Court award is tainted with "illegality" and "irrationality" in that their conclusion having regard to the evidence is unreasonable. The more reasonable interpretation is that the employees of that estate are entitled to the school children education and transport allowance with others in the same estate.

[Application granted with costs]

Cases referred to:
Minister of Home Afffairs v. Persatuan Aliran Kesedran Negara [1990] 1 MLJ 351 ***(refd)***
Malayan Agricultural Procedures Association v. All Malayan Estates Staff Union [1988] 1 ILKR Jan. 31 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, ss. 16, 33(1)(2), 33B(1)

For the applicant - B. Lobo; T/n Lobo & Asso.
For the respondent - Peh Lee Kheng; T/n Shearn Delamore & Co.

JUDGMENT

Hj. Abu Mansor bin Ali J:

Di dalam notis usul lampiran (10) pemohon memohon perintah-perintah berikut:

(1) Suatu perintah certiorari untuk dikemukakan dan membatalkan keputusan Mahkamah Perusahaan No. 82 dalam 1991 bertarikh 19 Mac 1991 dalam kes Mahkamah Perusahaan No.1/1-25/90;

(2) Suatu perintah mandamus ditujukan kepada Mahkamah Perusahaan untuk membuat semula keputusan dalam kes Mahkamah Perusahaan 1/1-25/90 oleh bahagian Mahkamah Perusahaan lain mengikut undang-undang;

(3) Kos bagi permohonan ini hendaklah menjadi kos dalam perkara ini.

The facts of this case are as follows.

(1) The applicant and the respondents are parties to a collective agreement (said agreement) taken cognizance of by the Industrial Court by virtue of s.16 of the Industrial Relations Act 1967 (the said Act).

(2) The terms and conditions of employment of employees (said employees) of the 2nd to 4th respondents are as contained in the said agreement.

(3) The applicant then sought an interpretation of Article 52(a) of the said agreement from the said Industrial Court under s.33(l) of the said Act in terms of exhibit "AMESU-l".

(4) It is not disputed and in fact admitted by respondents No. 2, No. 3 and No. 4, in para 2 of enclosure (21), as members of the 1st respondent and they, as employees, are bound by the said agreement.

The Industrial Court heard the case of the parties and held as follows:

(a) The employees of the 3rd respondent had been physically transferred from the 3rd respondent's factory at Petaling Jaya, Selangor to Sungai Mahang Estate, Nilai, Negeri Sembilan, owned by the 4th respondent (see the affidavit of owner of 4th respondent enclosure (20a)).

(b) The employees of the 4th respondent at Sungai Mahang Estate, Nilai, were at all material times receiving the benefit of the allowance in Article 52(e) of the said agreement *viz* school children education and transport allowance.

(c) Since upon such transfer, there was no change in employer and the 3rd respondent continued to employ the said employees and therefore the said employees were not entitled to the benefit of school children education and transport allowance under Article 52(a) read with Article 52(e) of the said agreement.

(d) That any existing benefit in Sungai Mahang Estate, Nilai, is solely meant for employees of that estate and not employees of the 3rd respondent who also work in the same estate after their physical transfer.

The issue before this Court was:

(a) Did the Industrial Court commit an error of jurisdiction because in deciding, as it did, the Industrial Court was irrational as not supported by the "evidence" or which, on the evidence, it could not reach.

(b) Did the Industrial Court commit a jurisdictional error if the applicant's prayer in para 2 of enclosure (2) and paragraphs 1 - 3 of enclosure (10) be granted.

The applicant's Counsel submitted that to appreciate the pivotal point of the applicant's case he proceeded to summarise the jurisdictional ground on which the applicant's application is based as follows:

(a) The Industrial Court acting under s.33(l) of the Act ignored or did not take into account the express provisions of Article 52 which it was required to interpret but instead while trying to so interpret Article 52, it purported to vary the said Article 52 by its Award.

(b) The Industrial Court also acted in excess of its powers when s. 33(l) is compared and read with s. 33(2) of the said Act, the latter section empowering the Industrial Court to vary the said agreement on very narrow grounds.

(c) Since the Industrial Court acted in excess of its powers conferred by the Act, the ouster clause/s. 33B(l) of the Act will not apply because the said ouster clause will only apply if the award is made "subject to this Act" i.e. in compliance with this Act.

The applicant further submitted that the Industrial Court in its decision had committed jurisdictional error in that the decision was tainted with "illegality", "irrationality" or "procedural impropriety" as stated in the case of *Minister of Home Affairs v. Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351 at 355. The applicant's Counsel submitted further this error is apparent when the Award, exhibit "AMESU-6" of enclosure (1) at paras 5, 6. and 7 are examined. In them the Industrial Court had ignored the express word "estate" in Article 52(a) and instead discussed and read into the term estate like the 3rd respondent (Golden Hope Latex Sdn Bhd) and the 4th respondent (London Asiatic Rubber & Produce Co. Ltd). The Industrial Court has thus varied Article 52(a) to now mean "any existing benefits provided for by an estate" should read as "any existing benefit provided for by an "employer company" to its employees...". Applicant's Counsel submitted this is jurisdictional error because only in an application under s. 33(2) of the Act can the Industrial Court 'vary' an agreement on very limited grounds. In fact, the Industrial Court of a different panel in *Malayan Agricultural Producers Association v. All Malayan Estates Staff Union* [19881 1 ILR. Jan. 31 at 33 did not fall into jurisdictional error when it held "So long as an estate has that particular existing benefit, in this case, the Isolation/Hill Allowance, employees within the scope of the agreement should be paid that allowance. Whether the Pahang Allowance is limited to any

category of workers in the estate is for the company to prove. If the intention had been to limit the existing benefit provision to those who were drawing the allowance before a certain date, words to that effect would have been included as was done in Clause V in exhibit Co. 4. We accept the interpretation of the Union as correct". Furthermore s.17 of the Industrial Relations Act, 1967 recognises that terms and conditions of a collective agreement can run with an "undertaking" or part of it as opposed to a legal entity.

As for the 4th respondent's contention for the first time in enclosure (20a) para 5 that the lands in Sungai Mahang Estate were leased to the 3rd respondent. This was never raised in Counsel's submission and also neither documented in 3rd defendant's affidavit in enclosure (21a). Finally the Industrial Court in their Award "AMESU-6" found conclusively that Sungai Mahang Estate was the 4th defendant.

I uphold the submission of the applicant's Counsel and say that it has merit and I find that on a construction of Article 52(a) of the collective agreement, the said employees after their physical transfer to Sungai Mahang Estate should enjoy the benefit of the allowance in Article 52(e) like the employees of the 4th responden who were already enjoying the same benefit.

I find the Industrial Court Award is tainted with "illegality" and "irrationality" in that their conclusion having regard to the evidence is unreasonable. The more reasonable of the interpretations is that the employees of that estate are entitled to the school children education and transport allowance 'with others in the same estate. I grant the application in terms of prayers in enclosure (2) para 2 with costs (as repeated in enclosure (10) paragraphs 1 to 3).